

*A brief State of the Case and Tryal had in the Kings Bench, in the Assize brought for the Office of Chief Clerk for inrolling of Pleas in the said Court; between William Bridgeman, Esq; Plaintiff; and Rowland Holt, Esq; and Edward Coleman, Gent. Defendants.*

**T**He Plaintiff declares that the Office of Chief Clerk for the inrolling of Pleas in the Court of *Kings Bench*, was time out of mind granted and grantable by the Kings and Queens of this Realm: And that King *Charles II.* by Letters Patents under the great Seal of *England*, dated 2 June, 25 of his Reign (reciting that he had by his Letters Patents, 1 July, 14 of his Reign (after a recital therein that *Robert Henly* and *Samuel Wightwicke* were duly admitted to this Office for their lives) granted this Office (upon the Petition of *Elliott*) to *Silas Titus* so soon as it should become void, and that *Wightwicke* was dead, and *Titus* had surrendered his Patent) did, in consideration of service done by the Earl of *Arlington*, grant this Office to the Plaintiff and his heirs, for the lives of the Earl of *Arlington*, Duke of *Grafton*, and Dutchess of *Grafton*, and the longer liver of them, from and after the death, forfeiture, or surrender of Sir *Robert Henly*. And that Sir *Robert Henly* was dead; and that thereupon the Plaintiff became seized, and was seized of the Office till the Defendants disseized him, &c.

The Defendants pleaded that they did no wrong or disseizin to the Plaintiff, which is the General Issue.

The Recognitors were,

Sir John Wolstenholm of Enfield, Bar.	John Smith, of Hackney, Esq;
Sir William Hedges of Finchley, Knight.	William Northy, of the same, Esq;
Ralph Bucknell, of St. Giles in the Fields, Esquire.	Edward Harris, of Southgate, Esq;
George Ford, of Bromely, Esq;	Daniel Thomas, of Highgate, Esq;
William Underhill, of Cripplegate, Esq;	Abraham Dashwood, of Cripplegate, Esq;
John Raymund, of Highgate, Esq;	Arthur Baily, of Mile-end, Esq;

The Plaintiff gave no Evidence but the Letters Patents of 2 June, 25 Car. 2. And being put to shew that the Office was  
B anciently



anciently granted by the Kings and Queens of *England*, according as he had declared; he did shew none but the Patent of King *Charles II.*

Though the Plaintiffs Grant were to him and his heirs (which ought not to be of such an Office, for so it might come to an Infant) yet the Defendants Council waved that just exception, and insisted upon the meer right of Granting the said Office, (*viz.*) That it was not grantable by the Crown, but was an Office belonging to the chief Justice of the *Kings Bench*, and only grantable by him.

And for proof hereof it was shewed, that this Officer is to in-roll the Pleas between party and party only, and had nothing to do in the Pleas of the Crown, or Criminal matters. That all the Rolls and Records in this Office were in the custody of the Chief Justice; who with his own Money pays for the Parchment of all those Rolls and Records, and all Writs to certify or remove the Records in this Clerks Office are directed to the Chief Justice; and this Officer is in truth but his Clerk, and the Office grantable by him alone, for any life, or two lives, when void.

And for further proof of the Chief Justices right to grant this Office, it was shewed and proved by the Records of the Court, that for the space and time of 235 years last past, this Office, when void, had been granted successively by the Chief Justice for the time being, to whom he pleased, and enjoyed accordingly by such grants; which was plainly made out by the following Records.

*Trin. 36 H. 6.  
Rot. 36. int.  
placita Reg.  
A. Dom. 1458.  
235 years  
since.*

It is inrolled thus: Be it remembered that the tenth of July this Term, in the Court of our Lord the King at *Westminster*, came *William Sonde*, Chief Clerk of our Lord the King for enrolling Pleas before the King himself in his proper person, and in the same Court, of his Free Will did surrender his said Office into the hands of Sir *John Fortescue*, Knight, Chief Justice of the Court (to whom of right it doth belong to grant that Office to whomsoever he pleaseth, whensoever that Office shall be void, during the time that the said Sir *John Fortescue* shall be Chief Justice,) and that Office doth resign and relinquish to the use of *William Brome*. And the said Chief Justice doth accept the same surrender, and the same day grants the said Office to the said *William Brome*, who is presently admitted to the said Office for his life, and sworn accordingly.

*Mich. 1. E. 14.  
Rot. 51.*

Upon *Bromes* surrender to Sir *John Markham*, then Chief Justice; the Chief Justice grants it to *William Sonde*, who is admitted for life, and sworn.

*Mich. 8 E. 4.  
Rot. 26. 1467.*

Upon the surrender of *William Sonde* to the said Sir *John Markham*, then Chief Justice; he grants it to *Reginald Sonde*, who is admitted and sworn.

*Reginald Sonde* enjoyed this till the time of *H. 7.* and then *Bray* came in, and was Clerk till 13 *H. 7.* and then came in *Roper*. Upon



Upon Surrender of this Office to Sir *John Fineux* Chief Justice, Hil. 9 H. 8. Rot. 3. 1518.  
by *John Roper*, the Chief Justice grants the Office to Sir *John Roper* and *William Roper*, who are admitted for their lives, and sworn.

Upon Surrender of *William Roper* (Sir *John* being dead) to Sir *Richard Lister* then Chief Justice, he grants the Office to *William Roper* and *Richard Heywood* for their lives, and they are admitted and sworn. Hil. 1 & 2 E. 6. 1547.

Upon Surrender of *William Roper* (*Heywood* being dead) to Sir *Robert Catlin* then Chief Justice, he granted this Office to *John Roper* and *Thomas Roper* for their lives, and they are admitted and sworn. Hil. 15 E. 1573.

Upon Surrender of *John Roper* (*Tho.* being dead) to Sir *Henry Montague* then Chief Justice, he grants this Office to *Robert Heath* and *Robert Shute* for their lives, who are admitted and sworn thereupon. Mich. 14 Jac. 1. Rot. 2. 1616.

*Shute* being dead, upon Sir *Robert Heath's* Surrender to Sir *James Leigh* Chief Justice, he grants the Office to Sir *Robert Heath* and *George Paul* for their lives, and they are sworn, and admitted in Court. Hil. 14. Jac. 1. 1620.

Upon the Surrender of Sir *Robert Heath* and Sir *George Paul* to Sir *Nicholas Hide* then Chief Justice, he grants it to *Robert Henly* and *Samuel Wightwicke* for their lives, and they are admitted and sworn. Mich. 5 Car. 1.

Upon *Wightwicke's* Surrender to *H. Roll* then Chief Justice, Trin. 1654. Rot. 1.  
(*Henly* being then under Sequestration) the Chief Justice grants it to *Samuel Wightwicke* and *Robert Henly junior*, for their lives, and they are admitted and sworn.

Upon the Surrender of *Samuel Wightwicke* and *Robert Henly* to Sir *Robert Foster* then Chief Justice, he grants it to *Henly* and *Wightwicke* for their lives, and they were admitted and sworn. Mich. 12 Car. 2. Rot. 2.

*Wightwicke* dyed soon after, and Sir *Robert Henly* enjoyed it under that Grant 32 year.

Note, In every one of these Records (except the last) after the mention of the Surrender to the Chief Justice, are these words, (To whom of Right it doth belong to grant that Office to whomsoever he pleaseth, when it shall be void, &c.)

It was then insisted by the Defendants, and proved that there was three Officers considerable in the Court of *Kings Bench*, all of the nature of Clerks.

The first and chiefest is the Clerk of the Crown, called sometimes *Coronator*. & *Attornat. Domini Regis*, &c. His business is to draw all Indictments, Informations, &c. in Pleas of the Crown, and Criminal matters. This Officer being the Chief Clerk in this Court, is always made by Patent under the Great Seal.

The second Officer is this Prothonotary, or Chief Clerk, for enrolling Pleas between party and party in Civil matters. He, and



and his Under Clerks, enroll all Declarations, Pleadings, &c. in Civil Causes, especially where the proceedings are upon Bill. This Officer files in his Office all Bills, Declarations, &c. and all the Writs of this Court in Civil matters are made by him and his Under Clerks. and tested by the Chief Justice; and he hath the custody of all Returns of *Elegits*, Executions, *Scire fac.*s, and the filing all Bails: All which are in the eye and Judgment of the Law, in the hands of the Chief Justice, whose Clerk in truth this Officer is.

The third Officer is the *Custos Bre.* who keeps all the Rolls and Records of Judgments in this Court, which are yet said to be in the Custody of the Chief Justice; and this Office is in the gift and disposal of the Chief Justice, when void.

It was further shewed by the Defendants, that in the Stat. of E. 6. against the Sale of Offices, &c. there is yet a Salvo to the two Chief Justices and Justices of Assize, to dispose of the Offices in their disposition, as they used formerly; and ever since that Statute, these Offices of Chief Clerk to enroll the Pleas, &c. and the *Custos Bre.* have without controul been disposed by the Chief Justice of this Court; and are in truth the only considerable Offices in his gift.

It was observed that in the Grant of this Office to Mr. *Bridgman* the Plaintiff, it is recited that *Henly* and *Wightwicke* were *debit. modo* admitted to this Office, yet they never had any Grant from the Crown, nor no other Grant save that of the Chief Justice before-mentioned.

And then to prove that the Defendants have a good Title to the Office, the Grant of the now Chief Justice to them for their lives was produced, and proved that they were admitted, and sworn in Court.

To answer all this Evidence: The Plaintiffs Council produced the Copy of an Act of Parliament, which was made 15 E. 3. to this effect; It is consented, that if any of the Offices aforesaid (which are other great Offices mentioned in the Act) or the Controller or Chief Clerk in the Common Bench or *Kings Bench*, by death or other cause be ousted of their Office, the King, with the consent of the great men, &c. shall put another fit person in such Office.

From whence the Plaintiffs Council would infer, that the King had a right to grant this Office; and that this Act was declaratory of such his right; and that all the Grants by the Chief Justices since, were but usurpations on the Crown; but no usage of granting it by the Chief Justices, how long soever such usage hath been, would prevail against the Kings right.

To this the Defendants answered, That this Act was repealed, which appears by the Statute of 17 E. 3. Note, The reasons of the Repeal are expressed; because the said Statute of 15 E. 3. is contray to the Law and Usages of the Realm, and the Rights and Prerogatives of the King.

But



But for a full and plain answer, they shewed that the Office in question was not the Office mentioned in that Act; for that Act mentions the Chief Clerk in the *Kings Bench*, which is the Clerk of the Crown, who is not only called the Chief Clerk, but in reality is the Chief Clerk in that Court, and hath the precedence of this Officer, both in Court and elsewhere. And the Officer whose Office is now in question was never so much as called Chief Clerk in the *Kings Bench*: But it's true he is the chief of those Clerks that are for the inrolling of Civil Pleas in that Court, and therefore is called Chief Clerk for the inrolling of Pleas, to distinguish him from the Under Clerks whose business is likewise to inroll Pleas there.

*Stat. 2 H. 4. made against the extortion of this Officer on the Crown side calls him Clerk of the Crown.*

And the Defendants further insisted, that the usage doth demonstrate that this Chief Clerk in the *Kings Bench*, in that Act named and intended, was the Clerk of the Crown in that Court; for that Office hath ever since been granted when void by the Kings Letters Patents, and that it was not this Officer that is named and intended by that Act; for that this Office was never enjoyed one day by vertue of any Grant from the Crown.

And the Defendants further insisted, that it was a scandal and unworthy imputation upon all those Chief Justices, persons of clear and unspotted reputations to suggest that they would impose upon the Crown, and usurp upon it, if the right of granting this Office had been in the Crown. And Sir Robert Heath, that was then the Kings Solicitor took a grant of the Office in question, from the Chief Justice; and upon his Admittance, the Chief Justices Right of granting is asserted upon Record.

And all this Evidence on both sides being given, and fully heard, the Court briefly summed up the same, and particularly the Evidence of the Act 15 E. 3. and what was urged from the same by the Plaintiff and the Defendants answer thereunto, and left the matter to the Jury upon the whole Evidence: And this at the desire of the Plaintiffs Council.

The Jury withdrew, and after some time of Consideration, gave a Verdict for the Defendants.

Upon this Verdict given, the Plaintiffs Council prayed leave to bring in a Bill of Exceptions; and after several days meeting by the Plaintiffs Council, they produced in Court, and tendred to the three Judges to be sealed, a Parchment writing, which they called a Bill of Exceptions, formed in such a manner, and stuffed with such matter as was never before known; and is hoped, that for the honour of Justice, and for the sake of Property, will never again be offered in any case. In which, after a recital of the Record of the Declaration and Issue in the Cause, it is alledged that the Plaintiffs Council produced in Evidence the Grant of the Office to the Plaintiff, and shewed to the Court and Jury, that the Office is of the grant of the Crown; that to make out the right of King Charles II. to grant this Office to



the Plaintiff, they gave in Evidence the Act of 15 E. 3. which in the Bill is set out at large, (and is in substance as is herein before set forth) and in the Bill it is alledged, that the Justices refused to allow, admit, and receive the allegations and matters given in Evidence, as sufficient to prove the Plaintiffs Title to this Office, by reason whereof the Jury found the Defendants did not disseise the Plaintiff. And the Bill prays that the Justices would put their Seals thereunto, according to the Staute of *Westm. 2.*

And the Justices, upon reading the Bill of Exceptions, refused to Seal it, and that upon very good reason: The matter and ground of that Bill being false, idle and frivolous. 1. Because it is therein positively asserted that Mr. Attorney, and others the Plaintiffs Council, did (besides the Patent in question, and the Act of 15 E. 3.) shew to the Court, and the Recognitors of the Assize, that the Office was of the gift and grant of the King of England, whensoever it should be void. But there was no Evidence to shew any such Right in the King, unless the Councils affirmation, without proof as well as reason, shall be accounted a demonstration. 2. The allegation in the Bill is, (that the Justices refused to allow, admit, and receive the Allegations and Matters given in evidence for the Plaintiff, as sufficient to maintain his Title) if it be thereby intended that those matters shewed by the Plaintiff in the Tryal of the Cause, were not by the Judges allowed and admitted to be Evidence, or to be given as Evidence. This is notoriously false in Fact, for as they were given in Evidence by the Plaintiff, so they were summed up by the Court in their directions to the Jury, as part of the Plaintiffs Evidence, together with the Defendants answer to them.

But if by that Allegation in the Bill it is intended, that the Court did not allow these matters shewed by the Plaintiff at the Tryal to be a sufficient evidence to maintain his Title, this is as frivolous as the other was false: For it's not the business of the Court in Tryals to determine what Evidence is sufficient to maintain the Title in question; that is the work of the Jury, unless it be referred to the Court, upon a Demurrer to the Evidence (in which case the Jury is discharged) which was not in this Case: But the matter upon the Plaintiff and Defendants Evidence was left fairly to the Jury, both for the truth and validity of it (as in such Cases it ought to be) and they having found the Defendants did not disseise the Plaintiff, if the Plaintiff conceive himself aggrieved, he hath a plain remedy by an Attaint, wherein the truth or falsity, sufficiency or insufficiency, both of the Plaintiffs and Defendants evidence will be fairly tryed again by another Jury. But no Bill of Exceptions will lye in such Case, by the Statute, when the Evidence given is admitted as evidence, and left to a Jury by the Court.

*v. Stat. VVest.*  
2. C. 31.

And then to mend the matter, It is alledged as a fault of the Judges



Judges, that they did not admit of Allegations, together with the matters given in evidence as sufficient to maintain the Plaintiffs Title, whereby it plainly appears, that the Plaintiffs Council would not rely upon the evidence given, but they were forced to supply the defect of it by bare Allegations. And this is the first time that ever Allegations were thought of any force to make out a Title, or to supply the defect of evidence: And if this should be admitted, Mens Titles may easily be defeated. By all which considerations, and divers other reasons it will appear that this pretended Bill of exceptions is groundless, false and impertinent. And if the Justices had not refused to seal it, they had done an apparent injustice to the Defendants.

It is next to be considered, that unless the Judges, or one of them had sealed it, the matter of it cannot be examined upon a writ of Error, for it is the Justices sealing makes it assigneable upon Record, for so doth the Statute of *Westm. 2.* require. And if it be objected, that then it will be in the power of the Judges, by refusing to seal the Bill, to deprive the party of the benefit of the Statute.

It is answered, The party grieved may have his Action upon *Resp.* the Statute against the Judges that shall refuse to seal a Bill, when by law they ought; and he shall recover damages proportionable to the injury received.

If therefore the Plaintiff thinks himself aggrieved by the Judges, the course of common Justice is open, and he may pursue his remedy, and have satisfaction if he be injured.

And there can be no failure of Justice, for the Judges may be sued in either of the two Courts of *Westminster-Hall*, in the *Common Pleas*, or the *Exchequer*; for the three Judges are to be Defendants. And the Chief Justice, tho not a party upon the Record, yet his Title and interest being the question, he ought not to try the Action against the other Judges; therefore they are ousted of having the privilege of being sued in the *Kings Bench*. There lyeth also a Writ out of *Chancery*, to command the Judges to seal a Bill of Exceptions.

And this further observation may be added, that if the inheritance of this Office may be granted (as it is by the Patent in question, to the Plaintiff and his Heirs determinable upon three lives; and by another in Reversion to *Babington* and his Heirs in trust for the Earl of *Arlington* and his Heirs) it would be a great inconvenience, for then it may descend to Women and Children, who cannot be Clerks. And tho the Defendants did not take advantage of this upon the Tryal, yet are they not hindered from insisting upon it at any time, since it is a matter that appears upon Record, and might have been moved in arrest of Judgment, if a Verdict had been given against them. Moreover, it is to be observed, that if the Crown should grant this Office, the Chief Justice will be no longer answerable for the Keeping of the Records, if the Officer should be insolvent.

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It is not, however, the case that the only way to avoid the risk of a common law claim is to avoid the use of the word "infringement". The fact that a claimant has used the word "infringement" does not, in itself, establish that the claimant has made a claim in tort. The claimant must also show that the defendant has acted in a way which is likely to cause the claimant to suffer damage. In the case of a claim in tort, the claimant must also show that the defendant has acted in a way which is likely to cause the claimant to suffer damage. In the case of a claim in tort, the claimant must also show that the defendant has acted in a way which is likely to cause the claimant to suffer damage.

[illegible]

And this further objection may be added, that if the inheritance of this Office may be claimed (as it is by the Patent in question) to the Plaintiff and his Heirs determinable upon three lives; and by another in Reversion to the Defendant and his Heirs in fee for the Term of Abeyance and his Heirs it would be a great inconvenience, for then it may descend to Women and Children, who cannot be Clerks. And tho the Defendants did not take advantage of this upon the Trial, yet are they not hindered from doing upon at any time, since it is a matter that appears upon Record, and might have been moved in arrest of Judgment, if a Verdict had been given against them. Moreover it is to be observed, that if the Crown should grant this Office to the Plaintiff, it will be no longer answerable for the keeping of the Records, if the Officer should die intestate.

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